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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re N.M. et al., Persons
Coming Under the Juvenile
Court Law.

B289987
(Los Angeles County Super.
Ct. Nos. 18CCJP01545A,
18CCJP01545B,
18CCJP01545C)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

R.M.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County. Victor G. Miramontes, Judge. Affirmed.

Gina Zaragoza, under appointment by the Court of Appeal,
for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Acting Assistant County Counsel, and Stephanie Jo Reagan,
Principal Deputy County Counsel, for Plaintiff and Respondent.

In this juvenile dependency case, defendant and appellant R.M. (father) challenges the juvenile court's jurisdictional findings and orders declaring his three children dependents of the court. In particular, father argues neither his alcohol use nor his domestic disputes with his wife and mother of the children (mother) placed the children at a substantial risk of serious physical harm. As explained below, we conclude substantial evidence supports one ground for the juvenile court's exercise of dependency jurisdiction and, therefore, we affirm.

BACKGROUND

1. Family History

The family consists of father, mother, and their three children—a 14-year-old daughter, N.M., a 12-year-old son, R.M., and a 7-year-old daughter, S.M. Although mother and father had been married since 2000 and the entire family lived together in the same house, at the time these proceedings began, mother and father were separated and did not share a room at home. Instead, mother shared a room with their younger daughter and father had his own room.

a. September 2015 Incident

In September 2015, mother called police to the family's home after she and father had an argument. Mother told the responding officers that father had come home drunk that night

and when she confronted him, he said, “If you don’t leave me alone, I’m going to beat your ass.” Although the children were home at the time, they were asleep and did not see or hear the argument. Father had never physically hurt mother and did not do so that night. When asked, mother told the officers that she did not believe father would hurt her. Mother also told the officers that the past four years had been difficult financially for the family and, as a result, father had begun to drink heavily. Mother indicated she was considering divorce.

Initially, father was not cooperative with the officers, who reported smelling “a strong odor of alcohol emitting from [father’s] breath and person.” Because father was uncooperative and highly intoxicated, the officers placed him in handcuffs and took him to their patrol car to interview him. Father explained he was angry with mother because she would not leave him alone and he raised his voice at her. He denied physically touching her. No arrests were made.

b. June 2016 Incident and Referral

In June 2016, police again were called to the family’s home. Mother and father had been arguing about divorce and father had put some of mother’s belongings in the front yard. The incident report stated, “At no point did the argument become physical, but the verbal altercation did take place in front of their mutual children.” The responding officers reported father was “obviously intoxicated” and initially argumentative, which behavior resulted in the officers placing him in handcuffs. The police officers stated father “walked with a staggered gait, and the odor of an unknown alcoholic beverage emitted from his person.” The officers also reported that, although there was no history of violence between father and the children, the son, R.M.,

told the officers that he had tried to remove his younger sister from the area where mother and father were arguing that night, but father said he would “ ‘beat him up’ ” if R.M. moved his sister. The responding officers determined no crime had been committed.

Nonetheless, the June 2016 incident generated a referral to the Los Angeles County Department of Children and Family Services (Department), alleging father emotionally abused the children. The Department investigated the allegation and found no indications of abuse or neglect. The children denied any kind of abuse, father tested negative for drugs, and the parents reported being in the process of divorce. The Department concluded the allegation of emotional abuse by father was inconclusive and closed the case.

2. January 2018 Incident and Referral

On January 27, 2018, police again responded to a domestic incident at the family’s home. Mother had arrived home early in the morning after having been out with friends the night before. Father was angry with mother because he and the children had been unable to contact her for a portion of the night (she had left her phone in her car) and because he did not expect her to stay out as long as she did. When mother finally contacted father, he told her not to come home because he was furious with her and did not know how he would react if she came home. Based on this and because she had been drinking, mother decided to sleep at a friend’s house.

When she arrived home in the morning, she went to her room, which she shared with her younger daughter. Soon after, father entered the room and started yelling at mother. She yelled at him not to hit her. He told her to leave and threw some

of her belongings outside. Then holding her wrist behind her back, father pushed or walked mother from the house. Father locked mother outside and she called the police. No one was injured, mother had no marks on her body, and mother did not request an emergency protective order.

The children were home when the incident occurred. The younger daughter and son were in the bedroom when father began yelling at mother. They saw father push mother out of the house. The younger daughter was crying hysterically. The son went to his room because he was scared. Although the older daughter did not see the incident, she heard it and she heard mother say either, “Don’t hit me,” or, “Don’t touch me.”

In light of mother’s account and father’s refusal to answer any questions, the police officers arrested father for domestic violence. Incident to his arrest, the officers found two clear plastic bags and a folded dollar bill containing small amounts of methamphetamine and cocaine in father’s pocket. Father was charged with domestic violence and drug possession.

The incident prompted a referral to the Department, alleging “emotional abuse by the father.” A few days after the incident, a Department social worker visited the family and interviewed mother, father, and the children. Mother told the social worker father was “a known alcoholic and has been abusing it for years.” She said father would be gone for days without notice and would come home drunk. Father said he worked as an Uber driver and had found the drugs in his car after a late night of working. He put them in his pocket when cleaning out his car, then forgot about them. Mother and the children were surprised to learn father had drugs with him.

The older daughter N.M. told the social worker there had been times when father did not come home and was drunk. Because of his drinking, N.M. did not bring friends to the house. She also explained that on the night mother had gone out with friends, her younger sister S.M. was upset because she wanted to talk to mother. Father became upset with S.M. and told her to “ ‘shut up or he would hit her.’ ” N.M. told the social worker “she had gotten used to father’s alcoholism and abuse” and believed father would rather stay out drinking with friends than be home with his children. Although N.M. stated father emotionally abused them when he was mad, he never physically abused them.

The son R.M. told the social worker mother and father had fought before. He also said that in the past when father was “really mad,” he would hit R.M. on the head with his hand and would hit R.M. if he cried for too long. The social worker reported R.M. was scared of father. The younger daughter also recalled mother and father arguing on previous occasions. She said she was scared when father was angry.

At the Department’s request, father took a drug test on February 14, 2018, which came back negative. In late February, a criminal restraining order was issued, protecting mother from father. And by early March, father had moved out of the home and was living with an uncle. Mother had no criminal record, and father had no criminal record other than his January 2018 arrest.

3. Section 300 Petition

On March 8, 2018, more than one month after the January incident, the Department filed a three-count petition under Welfare and Institutions Code section 300, subdivisions (a) and

(b)¹ on behalf of the children. The subdivision (a) count (count a-1) was identical to the first subdivision (b) count (count b-1) and alleged mother and father had a history of engaging in “violent verbal altercations” in front of the children and father exhibited “violent conduct” against mother. The final subdivision (b) count (count b-2) alleged father had a history of substance abuse and was a current abuser of alcohol, which made father unable to care for and supervise the children. That count also alleged mother failed to protect the children from father’s substance abuse. All three counts alleged the parents’ conduct endangered the physical health and safety of the children and put them at substantial risk of serious physical harm inflicted either nonaccidentally (count a-1) or inadvertently (counts b-1 and b-2).²

¹ Undesignated statutory references are to the Welfare and Institutions Code.

² Counts a-1 and b-1 alleged: Mother and father “have a history of engaging in violent verbal altercations. On 1/27/18, the father grabbed the mother by the mother’s wrist, placed the mother’s hand behind the mother’s back and pushed the mother out of the home, in the presence of the children. The father threw the mother’s personal belonging outside the home. On a prior occasion, the father threatened to harm the mother. On prior occasions, the parents engaged in violent verbal altercations. Such violent conduct on the part of the father against the mother endangers the children’s physical health and safety and places the children at risk of serious physical harm, damage and danger.”

Count b-2 alleged: Father “has a history of substance abuse and is a current abuser of alcohol which renders the father incapable of providing regular care and supervision of the children. On 1/27/18 and on numerous prior occasions, the father was under the influence of alcohol while the children were in the

The detention hearing was held the next day. The juvenile court ordered the children detained from father and released to mother under Department supervision. Father received monitored visits with the children.

4. Adjudication and Disposition

A combined adjudication and disposition hearing was held on April 25, 2018. Prior to the hearing, the Department submitted its jurisdiction and disposition report to the court. A Department social worker had conducted further interviews, which reiterated what the Department previously had reported. Mother again described the January 2018 incident. She stated that when father came into the bedroom that morning after she had arrived home, she thought he might hit her although he did not. If he had hit her, she said it would have been the first time. She also explained she and father argued when he came home drunk and one time she slapped him. She said the children were always in their rooms when the arguments occurred, but she admitted the children likely heard the arguments. Mother also reported she had not requested a restraining order against father because she never felt physically threatened by him. But she had come to understand that emotional abuse was also domestic abuse and, therefore, she was “okay” with the criminal restraining order that had been filed following the January 2018

father’s care and supervision. On 1/27/18, illicit drugs were found on the father’s person. The mother . . . knew of the father’s substance abuse and failed to protect the children. The father’s substance abuse and the mother’s failure to protect the children endanger the children’s physical health and safety and place the children at risk of serious physical harm, damage and failure to protect [*sic*].”

incident. Mother told the Department social worker she had filed for divorce.

The social worker also spoke with father, who admitted that during the January 2018 incident he had thrown a few of mother's belongings outside the house, but denied pushing mother or twisting her arm. Father said he had " 'escorted her out' " and " 'probably grabbed her by her arm.' " He also stated he had never threatened or hit mother. Father denied drinking to excess or using drugs.

N.M. again told the social worker that father drank beer a lot. " 'My dad always smells like beer. There are beer bottles or cigarettes in the front seat of his car all the time. I noticed my dad started drinking excessively the past year and a half. He would be good for a month and then he would go back to drinking.' " She said father was " 'patient and doesn't get mad at us unless he is drunk.' " R.M. also reiterated that father drank beer, but said more recently father simply did not come home when he drank. Both N.M. and R.M. stated mother and father usually argued when father returned home after drinking. All of the children said they had never seen their parents hit one another. The Department social worker reported that all of the children were healthy, participated in sports, and excelled academically.

At adjudication, mother pleaded no contest to, and the juvenile court found true as to mother, the b-2 count, which alleged mother failed to protect the children from father's substance abuse.

Counsel for the Department argued the juvenile court should sustain the petition in its entirety, while counsel for the children argued the court should dismiss count a-1 and sustain

counts b-1 and b-2. Father contested all of the allegations against him. Counsel for father argued that although mother and father engaged in verbal confrontations, there was no evidence that father ever hit mother or that the children were subjected to or in the presence of violent confrontations. Similarly, counsel noted there was no evidence either that mother was injured during the January 2018 incident or that father was an alcoholic. Counsel asserted there was no current substantial risk to the children under either subdivision (a) or (b) of section 300.

The juvenile court sustained the petition, finding all three counts true as alleged, and declared the children dependents of the court under section 300, subdivisions (a) and (b). With respect to counts a-1 and b-1, the domestic violence counts, the court credited “mother’s description of the incidents and the corroborating testimony from the children, in particular, with regards to the 2018 incident and the additional evidence in the police reports.” The court also relied on the September 2015 and June 2016 incidents. And as to count b-2, the substance abuse count, the court relied on the evidence that father had been home with the children while under the influence and that the police had found him in possession of methamphetamine.

The juvenile court ordered the children removed from father and placed in mother’s physical custody with Department supervision. The court also ordered monitored visitation for father. Over father’s objection, the court signed his case plan ordering father to participate in reunification services.

5. Appeal

Father appealed from the juvenile court's April 25, 2018 orders sustaining the petition and declaring the children dependents of the court.³

DISCUSSION

1. Standard of Review

We review the juvenile court's jurisdictional findings for substantial evidence. (*In re Jonathan B.* (2015) 235 Cal.App.4th 115, 119.) We will affirm if there is reasonable, credible evidence of solid value to support the court's findings. (*Ibid.*) “ ‘In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court.’ ” (*In re I.J.* (2013) 56 Cal.4th 766, 773.) Under this standard, our review “ ‘begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact. All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the verdict, if possible. Where there is more than one inference which can reasonably be deduced from the facts, the appellate court is without power to substitute its deductions for those of the trier of fact.’ ” (*In re David H.* (2008) 165 Cal.App.4th 1626, 1633.) “We do not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts. [Citation.] The judgment will be

³ Father also appealed orders made on April 9, 2018. However, neither the record before us nor the parties on appeal mention proceedings held on that date.

upheld if it is supported by substantial evidence, even though substantial evidence to the contrary also exists and the trial court might have reached a different result had it believed other evidence.” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

“‘However, substantial evidence is not synonymous with *any* evidence. [Citations.] A decision supported by a mere scintilla of evidence need not be affirmed on appeal. [Citation.] Furthermore, “[w]hile substantial evidence may consist of inferences, such inferences must be ‘a product of logic and reason’ and ‘must rest on the evidence’ [citation]; *inferences that are the result of mere speculation or conjecture cannot support a finding* [citations].” [Citation.] “The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.” ’ ” (*In re David M.* (2005) 134 Cal.App.4th 822, 828.)

2. Jurisdiction Based on Father’s Substance Abuse

As noted above, the juvenile court sustained count b-2 of the petition, finding the children were at risk because of father’s substance abuse and mother’s admitted failure to protect the children from father’s substance abuse. As discussed below, we conclude substantial evidence supports this finding.

a. Applicable Law

Under section 300, subdivision (b)(1), a juvenile court may assert dependency jurisdiction and declare a child a dependent of the court when “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child . . . or by the inability of the parent . . . to provide regular care for the child due to the parent’s . . . substance abuse.” (§ 300, subd. (b)(1).)

“ ‘The court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.’ ” (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.) “ ‘The purpose of dependency proceedings is to prevent risk, not ignore it.’ ” (*Jonathan L. v. Superior Court* (2008) 165 Cal.App.4th 1074, 1104.) Nonetheless, “[a]lthough evidence of past conduct may be probative of current conditions, the court must determine ‘whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.’ [Citations.] Evidence of past conduct, without more, is insufficient to support a jurisdictional finding under section 300. There must be some reason beyond mere speculation to believe the alleged conduct will recur.” (*In re James R.* (2009) 176 Cal.App.4th 129, 135–136.)

A parent’s failure to take responsibility for, or to recognize the negative effects of, his or her conduct is relevant to the court’s consideration of risk under section 300. “ ‘[D]enial is a factor often relevant to determining whether persons are likely to modify their behavior in the future without court supervision.’ ” (*In re A.F.* (2016) 3 Cal.App.5th 283, 293.) “One cannot correct a problem one fails to acknowledge.” (*In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197.)

b. Substantial evidence supports the juvenile court’s exercise of jurisdiction based on father’s substance abuse.

In cases such as this, where there is no formal medical diagnosis of substance abuse, courts may find a parent is a substance abuser if the parent demonstrates “ ‘[a] maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one (or more) of the following, occurring within a 12–month period: [¶] (1) recurrent

substance use resulting in a failure to fulfill major role obligations at work, school, or home (e.g., repeated absences or poor work performance related to substance use; substance-related absences, suspensions, or expulsions from school; neglect of children or household); ¶] (2) recurrent substance use in situations in which it is physically hazardous (e.g., driving an automobile or operating a machine when impaired by substance use); ¶] (3) recurrent substance-related legal problems (e.g., arrests for substance-related disorderly conduct); and ¶] (4) continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance (e.g., arguments with spouse about consequences of intoxication, physical fights).’ ” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 766, quoting Am. Psychiatric Assn., *Diagnostic & Statistical Manual of Mental Disorders* (4th ed. 2000) p. 199.)

The evidence here demonstrated father’s alcohol use certainly fell within element (4), and potentially also element (1), thus supporting a finding that father suffered from alcohol abuse. Although father denied having a drinking problem, mother and the two older children consistently stated father drank excessively. It was reported that, for years, father would either come home drunk multiple times a month or would not come home at all because of his drinking. N.M. stated she purposely did not invite friends to the house because of father’s drinking. It also was consistently reported that when father was drunk he became angry, engaged in heated arguments with mother, yelled at the children, and sometimes threatened to hurt mother and the children (although he never carried through on those threats). Moreover, on two occasions police were called to the

home because mother and father were arguing in part because of father's drinking. On both occasions, the responding police found father in such a state of intoxication and antagonism that they handcuffed him in order to talk with him. Clearly, father's drinking not only caused interpersonal problems—sometimes necessitating a police response—but also caused him repeatedly to be absent from the home and away from his family.⁴

Although the evidence demonstrated father cared for his children, the evidence also showed father not only abused alcohol but also became belligerent when drunk, thus raising a real potential for serious physical harm to the children. Mother also had stated that father sometimes would be gone for days without notice, during which time father obviously could not care for or supervise the children and mother had to scramble to find childcare. In addition, father's denial of a substance abuse problem indicated he likely would not be changing his drinking habits or behavior. (*In re A.F.*, *supra*, 3 Cal.App.5th at p. 293; *In re Gabriel K.*, *supra*, 203 Cal.App.4th at p. 197.) Finally, as the Department points out, although father had moved out of the home and mother stated she was going to divorce father, she had said the same in the past, but never followed through. Thus, it was reasonable for the juvenile court to conclude at the time of the adjudication hearing that the volatile circumstances had not fully been resolved and jurisdiction was proper. “The purpose of

⁴ Apart from alcohol, substantial evidence does not support a finding that father abused any other substances. The record includes only one instance involving father and other substances—namely, the small amounts of drugs found in father's pockets during his January 2018 arrest. This alone does not constitute substantial evidence that father abused any substance other than alcohol.

dependency proceedings is to prevent risk, not ignore it.’ ”
(*Jonathan L. v. Superior Court*, *supra*, 165 Cal.App.4th at
p. 1104.)

3. Jurisdiction Based on Domestic Incidents

Because we conclude dependency jurisdiction was proper under count b-2, we need not and do not reach the remaining counts related to father’s domestic disputes with mother. A single basis for asserting dependency jurisdiction over the children is sufficient to sustain the juvenile court’s exercise of that jurisdiction. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451; *In re Ashley B.* (2011) 202 Cal.App.4th 968, 979 [“As long as there is one unassailable jurisdictional finding, it is immaterial that another might be inappropriate”].) We decline father’s invitation to exercise our discretion to address those remaining counts.

4. Dispositional Orders

Father does not challenge the juvenile court’s dispositional orders independent from the court’s jurisdictional findings. Thus, because we affirm the juvenile court’s exercise of jurisdiction, we affirm the court’s dispositional orders as well.

DISPOSITION

The April 25, 2018 orders are affirmed.
NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

CHAVEZ, J.

HOFFSTADT, J.